

## **Enhanced Property Standards for Designated Heritage Buildings**

<b>Date:</b>	January 17, 2007
<b>To:</b>	Licensing and Standards Committee
<b>From:</b>	Executive Director, Municipal Licensing and Standards Chief Planner and Executive Director, City Planning Division
<b>Wards:</b>	All
<b>Reference Number:</b>	Is070007

### **SUMMARY**

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Recent revisions to the *Ontario Heritage Act* (the Act) permit Council to implement Heritage Property Standards to protect the heritage attributes of properties designated under the Act. Existing property standards apply to all buildings, however this tool could give additional protection against the loss of heritage features on designated buildings through neglect and ensure repairs that are made maintain the heritage character of the building. Staff recommend that Council amend the existing property standards bylaw to include enhanced property standards for heritage properties. These enhancements are in the areas of appearance and maintenance of heritage attributes.

Municipal Licensing and Standards (Investigations) and City Planning (Heritage Preservation Services) staff will work together within the existing property standards enforcement system to identify and protect the heritage attributes of designated buildings. The right of an owner to delay repairs during appeals of orders issued in the current system can frustrate the City's attempts to require owners to maintain property. Staff recommend a further report on the City's power, under the *City of Toronto Act*, to carry out emergency repairs to protect the structural integrity of heritage property. The use of the City's ability to prosecute an owner who, inadvertently or willingly neglects a heritage building which, as a result, requires demolition without the consent of Council, is discussed.

Limited staff resources to perform investigations and appear at appeal hearings could diminish the effectiveness of heritage property standards.

## **RECOMMENDATIONS**

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### **The City Planning Division and Municipal Licensing and Standards Division recommend that:**

1. Council
  - a Prescribe minimum standards for the maintenance of the heritage attributes of property designated under Part IV (Individual Designation) or Part V (Heritage Conservation Districts) of the *Ontario Heritage Act*, as listed in Attachment 1;
  - b Require designated properties that do not comply with the standards to be repaired and maintained to conform with the standards;
2. Municipal Code Chapter 629, Property Standards, be amended to include the heritage property standards listed in Attachment 1;
3. The Executive Director, Municipal Licensing and Standards be directed to implement and enforce the amended property standards relating to designated heritage properties, with the assistance of the City Planning Division staff;
4. The Executive Director, Municipal Licensing and Standards, in consultation with the City Solicitor, be directed to report to the Licensing and Standards Committee on the use of the City's powers under the *City of Toronto Act* to effect the immediate repair of deficiencies which could contribute to deterioration in the structural integrity of a designated heritage building;
5. The Executive Director, Municipal Licensing and Standards and Chief Planner and Executive Director, City Planning Division be directed to report in one year to the Licensing and Standards Committee on any additional staff resources needed to effectively enforce the enhanced heritage property standards; and,
6. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto, including the introduction of any necessary bills.

## **IMPLEMENTATION POINTS**

The Municipal Licensing and Standards (ML&S) Division, through its Investigation Services, will enforce the enhanced property standards for designated heritage buildings along with the existing property standards applying to all property. Staff of the City Planning Division, Heritage Preservation Services unit will assist ML&S staff by alerting ML&S to properties requiring attention and providing advice on the heritage attributes of designated properties under investigation.

## **FINANCIAL IMPACT**

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These recommendations will have no financial impact beyond what has already been approved in the current year's budget.

## **DECISION HISTORY**

City Council, at its meeting of July 25, 26 and 27, 2006, adopted Motion J(31) which directed city officials to report to the Planning and Transportation Committee at its first meeting in 2007, on the enactment and implementation of a Heritage Property Standards Bylaw. Given the changes in Council's Committee Structure this report is being considered by the Licensing and Standards Committee.

## **ISSUE BACKGROUND**

On April 28, 2005, amendments to the *Ontario Heritage Act* (the Act) received Royal Assent. The amendments strengthened the ability of Ontario municipalities to protect their heritage resources. Among other provisions, the Act empowered municipalities to pass bylaws providing minimum standards for the maintenance of the heritage attributes of designated heritage properties. The municipality can also require property owners to repair and maintain their property to conform to the standards. (For these purposes, "designated" property includes both property individually designated under Part IV of the Act and all properties located in Heritage Conservation Districts designated under Part V of the Act).

The City of Toronto Official Plan states that significant heritage resources will be conserved. In the last few years, however, some designated heritage properties have deteriorated to the point where they had to be demolished to protect public safety.

The designated property at 6 Howard Street, which was a vacant walk-up apartment building built in 1914, is a case in point. The owner applied for approval to demolish the property in February 2004. The application was refused by Council on July 20, 2004 (TEYCC, Report 6, Clause 40) for a variety of reasons, including lack of replacement rental housing. It was noted at that time that the building was in a deteriorated state.

Council subsequently designated the property under the *Ontario Heritage Act*, which highlighted the importance of retaining it. However, due to holes in the roof the building continued to deteriorate, to the point where it was structurally unsound and in danger of collapsing on neighbouring buildings. The Chief Building Official ordered its demolition in March 2006.

## **COMMENTS**

Most of the designated heritage properties in the City are in good shape. They benefit from the pride of ownership that most owners bring to a heritage building. However,

some heritage properties in the City are being neglected by their owners and could suffer the same fate as 6 Howard Street.

The loss of this building sparked interest in how heritage property standards could strengthen the City's ability to deal with these situations.

Other jurisdictions in Canada and the United States have implemented heritage property standards bylaws, including at least two municipalities in Ontario: the City of Mississauga and City of St. Thomas. In all cases the heritage property standards have taken the form of amendments to the current general property standards bylaw. Staff recommend that the City of Toronto use this same approach and amend the Property Standards chapter of the Municipal Code to include enhanced provisions which will apply to designated heritage properties.

## **Standards for Heritage Properties**

The current property standards bylaw in force in the City and applying to all buildings contains provisions for securing vacant buildings against unauthorized entry and maintaining structural integrity of all buildings by keeping the elements out. Heritage property standards can ensure that repairs and maintenance needed to conserve the heritage attributes of designated buildings are done and in a way that does not detract from the heritage and architectural integrity of the building.

Currently, there are approximately 800 individually designated properties and 3,500 properties in Heritage Conservation Districts in the City of Toronto.

The heritage attributes of most of the individually designated properties are described in their designation bylaw. Descriptions can range from simply the facades and roof of the building to a detailed list of heritage features, such as decorative woodwork, windows, stained glass, finishes and even interior features. In Heritage Conservation Districts, the individual buildings are not described but themes, styles and defining characteristics (including features such as porches or materials such as brick) pertaining to the neighbourhood are discussed.

The proposed additional minimum standards for designated heritage property are detailed in Attachment 1. They include:

- Not permitting demolition as an alternative to repair and maintenance, as provided for in the property standards provisions of the *Building Code Act*;
- Special procedures and detailing on boarding up windows and doors to reflect the original appearance of these features;
- Requiring maintenance and repair of all heritage attributes, including the roof and foundation if they have been identified as heritage attributes and non-structural or simply decorative elements; and,
- Requiring repairs to match as closely as possible original materials and styles.

## **Enforcement**

The existing property standards system is generally “complaint-driven”, that is most enforcement action is taken as a result of information being provided to ML&S on buildings that may not be in compliance. In such cases, ML&S officers inspect the site and may issue orders to comply with the property standards bylaw, including a deadline. Building Division staff become involved only when a building is considered a public safety hazard. They can make orders to ensure public safety, such as demolition or securing of the site.

Staff recommend that investigation and enforcement of heritage property standards follow the same process. Notifications and information to ML&S would originate from the Manager of Heritage Preservation Services in the City Planning Division. Heritage staff would accompany ML&S staff on inspections related to heritage buildings, when necessary, to advise on the specific heritage attributes of each building.

When the Inventory of Heritage Properties is added to the IBMS computer system, it will be possible for ML&S staff to quickly determine whether any property that is under investigation is a heritage property.

## **Limitations on Effectiveness of Heritage Property Standards**

The *Ontario Heritage Act* provides for the enforcement of heritage property standards through the same sections of the *Building Code Act* that are used to enforce existing general property standards. These provisions permit owners to appeal the City’s orders to a Property Standards Committee, which is composed of members appointed by Council. Should orders be upheld by the Property Standards Committee, the owner may appeal the orders to the Superior Court of Justice.

If there are no appeals but the orders are not complied with the City can bring the building into compliance and recover the cost from the owner. However, the owner is not required to carry out the orders while he or she appeals them. Months can go by before a case is scheduled to be heard by the Court. With the possibility of having cases adjourned or held over, it can take months and even years for the Court to render a decision.

Staff (potentially including City Planning staff in the case of a designated heritage building) must appear at such hearings, placing a further demand on limited staff resources. ML&S staff already maintain a significant caseload and must give priority to life safety situations. This may cause delays in addressing designated heritage buildings needing investigation, most of which staff expect will be vacant and therefore receive a lower priority. Staff recommend that the additional workload created by the implementation of heritage property standards be monitored and a report be made to Licensing and Standards Committee after one year detailing any additional staff required to effectively enforce these standards.

Only in the case of an immediate danger to health and safety can ML&S staff order the owner to undertake the repairs immediately. In such cases, when the owner fails to act, the City may bring the building into compliance on an emergency basis and recover the cost of the work from the owner, although the owner still has the right of appeal regarding the necessity of the work being done on an emergency basis.

## **Enhanced Enforcement and Demolition by Neglect**

Under the enforcement provisions of the property standards provisions of the *Building Code Act* it is difficult to prove an immediate danger to health and safety for conditions such as holes in the roof in a vacant building. The City could be held liable for the costs incurred in making emergency repairs that only secure a building from the weather. Staff recommend that the Executive Director, Municipal Licensing and Standards, in consultation with the City Solicitor, report back to the Licensing and Standards Committee if the City's new powers under the *City of Toronto Act* could be used to allow the City to effectively require property owners to secure their buildings from structural deterioration.

In addition, the *Ontario Heritage Act* requires the owner of a designated heritage property to obtain permission from Council to demolish any building on that property. If an owner of designated heritage property allows a heritage building to deteriorate to the point when it must be demolished for public safety reasons, whether deliberate or inadvertent, and in spite of the City's use of every tool at its disposal to protect the structural integrity of the property, staff recommend that Council should be prepared to prosecute the owner under the *Ontario Heritage Act*. The maximum penalty under the Act for demolition of a designated property without approval is \$1,000,000. Staff also recommend that the owners of designated heritage property that is deteriorating be notified by the Chief Planner and Executive Director, City Planning Division, of the fact that they may be subject to such prosecution.

## **Conclusion**

Amending existing property standards to include enhanced minimum standards for designated heritage buildings would assist in protecting and maintaining those buildings' heritage attributes. Staff from City Planning and Municipal Licensing and Standards will work together to require the repair and maintenance of heritage buildings.

However, due to the ability of property owners to delay needed repairs and maintenance, regardless of the City's property standards powers, investigation of other means at the City's disposal to effect repairs right away that are required to protect structural integrity, including powers under the *City of Toronto Act*, will be necessary. Staff should also notify owners of designated properties that they may be subject to prosecution under the demolition provisions of the *Ontario Heritage Act* if their properties have to be demolished due to neglect.

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## SIGNATURES

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## ATTACHMENTS

Attachment No. 1 – Heritage Property Standards